

Chapter 14.53

CABLE CODE

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14.53.010 Permit Required.

It shall be unlawful for any person to use any space above or underneath the surface of any street, alley, sidewalk, or other public ground within the City of Lincoln for the installation, operation, and maintenance of any optic fiber cable, coaxial cable, or other communication cable unless such person has received a permit therefor granted by resolution of the City Council as provided here and in Section 14.53.070. This chapter shall not apply to any cable installed or operated by the holder of any franchise granted by the City for telephone or cable communication purposes. (Ord. 17447 §1; December 7, 1998: prior Ord. 14198 § 1; September 3, 1985).

14.53.020 Application for Permit.

Application for such permit shall be made in writing to the Department of Public Works and Utilities, and such application shall include a site plan which shall specifically show the space desired, its length, breadth, and height or depth, and the use intended to be made thereof; and the Department of Public Works and Utilities shall then refer said application to the City Council. Any additions or changes to the uses permitted shall require a new permit. If the cable is proposed to be located above ground on new poles to be installed by the applicant, the applicant must show to the satisfaction of the City that no existing poles are reasonably available to otherwise support the cable and that the applicant has acquired the right to use all such existing poles as are reasonably available. (Ord. 17447 §1; December 7, 1998: prior Ord. 16951 §105; March 11, 1996: Ord. 14198 § 2; September 3, 1985).

14.53.030 Construction Specifications.

The work shall be constructed in accordance with plans and specifications approved by the Department of Public Works and Utilities. The cable shall be attached to poles in accordance with the Lincoln Electrical Code or laid to a minimum depth of three and one-half feet from the top of the cable to the surface of the ground. All land surfaces and all pavement shall be restored to their original condition after the work is completed on each segment of the project. "As built" drawings shall be furnished to the

City by the permittee to show the precise locations, depths, and the nature of all materials installed in accordance with the permit. The City shall have the right at any time when in its judgment it becomes necessary or advisable to require a change of location of said cable as a matter of safety, or on account of a change of grade, resurfacing, repair, reconstruction of any street, alley, sidewalk, or other public ground or the construction of any structure thereon, or for any other reason, all of which shall be done at the cost and expense of the permittee in a good and workmanlike manner. (Ord. 17447 §3; December 7, 1998; prior Ord. 16951 §106; March 11, 1996: Ord. 14198 § 3; September 3, 1985).

14.53.040 Bond and Public Liability Insurance.

Every applicant for such permit shall file with the application a continuing bond in the sum of not less than \$5,000.00, but in the event that the City Council in the resolution authorizing the permit shall fix a different sum, then a bond for such sum so fixed shall be substituted and filed with the application. All bonds and sureties shall be approved by the City Attorney before such permit becomes effective. All bonds shall be conditioned that the person to whom such permit shall be issued and such person's heirs, successors, or assigns shall strictly comply with all applicable laws and regulations and all conditions of the permit and which shall save and keep the City free and harmless from any and all loss or damages or claims for damages arising from or out of the use of the space therein mentioned and for the maintenance of the street, alley, sidewalk, or other public ground, facilities or poles in such condition that said street, alley, sidewalk, or other public ground, facilities or poles shall at all times after installation, be safe for the public use; for the full and complete protection of the City against any and all litigation growing out of the granting of such permit or anything done under such permit and for the removal of any cable permitted above or underneath the public space by such permit at the sole expense of the permittee and the permittee's heirs, successors, or assigns; for the faithful performance and observance of all the terms and conditions of this chapter; and such bond shall also be conditioned for the prompt and full payment of the compensation required by this chapter, or any other ordinance required to be paid during the period said permit shall be outstanding. Following the issuance of such permit and as long as the use continues above or underneath such public space, the owners of such property from time to time shall also be responsible to the City for the performance of all of the conditions of said bond above described.

Whenever the City Council shall be of the opinion that the surety on such bond given such permit issued hereunder has become insufficient and shall so declare by resolution, new bond for such permit shall thereupon be filed with a new surety to be approved by the City Attorney.

In addition to the bond, the applicant shall be required to:

(a) At all times maintain public liability insurance in the form of a commercial or comprehensive general liability policy, or an acceptable substitute policy form as permitted by the City Attorney, with a minimum combined single limit of \$500,000.00 aggregate for any one occurrence. The coverages required herein shall be subject to review and approval by the City Attorney for conformance with the provisions of this section;

(b) At all times keep on file with the City Clerk a current certificate of insurance signed by a qualified agent of an insurance company licensed to do business in the State of Nebraska and approved by the City Attorney for conformance with the provisions of this section evidencing the existence of valid and effective policies of insurance naming the City as an additional insured for the coverage required by subsection (a) of this section, the limits of each policy, the policy number, the name of the insurer, the effective date and expiration date of each policy, the deductibles or self-insurance retainers of each policy,

and a copy of an endorsement placed on each policy requiring thirty day's notice by mail to the City Clerk before the insurer may cancel the policy for any reason, and upon request of the City Clerk or the City Attorney, a copy of any endorsements placed on such policies or the declarations page of such policies. Any termination or lapse of such insurance shall automatically revoke any permit issued pursuant to this chapter. (Ord 17447 §4; December 7, 1998: prior Ord. 15654 § 10; July 9, 1990: Ord. 14198 § 4; September 3, 1985).

14.53.050 Interference with Wastewater, Gas, or Water Pipes.

No person shall ever use the space above or under any such street, alley, or public ground in such manner as to interfere with any traffic-control cable, wastewater collector, gas, water, any cable installed or operated by the holder of any franchise or other authorization granted by the City, or any other public works utilities lawfully in such street, alley, or other public ground unless by consent of the City Council especially granted by resolution; and no such permit shall be granted until the applicant therefor has deposited with the Department of Public Works and Utilities a sum of money equal to the estimated cost prepared by the Department of Public Works and Utilities to defray the cost and expense of removing, replacing, and relaying such traffic-control cable, wastewater collector, gas, water pipes, any cable installed or operated by the holder of any franchise, or other authorization granted by the City, or other public works or utilities, and making the necessary connections therewith. Each and every applicant disturbing any such traffic-control cable, wastewater collector, gas, water pipes, any cable installed or operated by the holder of any franchise, or other authorization granted by the City, or other public works or utilities, shall, within ten days after disturbing it, restore the same to such condition as will meet with the approval of the Department of Public Works and Utilities. When such traffic-control cable, wastewater collector, gas, water pipes, any cable installed or operated by the holder of any franchise, or other authorization granted by the City, or other public works or utilities are so restored by said applicant, the sum so deposited with the Department of Public Works and Utilities shall be refunded to such applicant less any sums which may be necessary to defray any damages which might arise from such disruption. If such applicant shall fail to restore such traffic-control cable, wastewater collector, gas, or water pipes, any cable installed or operated by the holder of any franchise, or other authorization granted by the City, or other public works or utilities within ten days after the same is disturbed, then the Director of Public Works and Utilities shall cause the same to be restored in a manner meeting with his/her approval, and the cost thereof shall be paid out of the sum thus deposited plus any deficiency and amounts referred to in Section 14.53.070. (Ord. 17447 §5; December 7, 1998: prior Ord. 16951 §107; March 11, 1996: Ord. 14198 § 5; September 3, 1985).

14.53.060 Revocation of Permit; Removal of Structure.

A permit issued under this chapter may be revoked by resolution of the City Council upon a finding by them of such fact and the giving of five days written notice to such person by the City Clerk, for the following reasons:

- (a) Failure of the permitholder to pay the compensation required within ten days after the date for payment is due;
- (b) Failure or neglect of the permitholder to comply with the provisions of this chapter or any of the provisions of the Lincoln Municipal Code or provisions of the permit;
- (c) Failure to use the space for which the permit was granted for a continuous period of at least six months; or

(d) Upon a determination by the city that the space for which the permit was granted is needed for public use.

Upon revocation of a permit, the permitholder shall forthwith remove or abandon the optic fiber cable from the space for which the permit was granted at his/her own cost and expense and return that space to the City of Lincoln free and clear of all encroachments of any type, at no expense to the city. Such space shall be filled to the satisfaction of the Director of Public Works and Utilities at the expense of the permitholder. If a removal, abandonment, or fill has been requested and the said removal, abandonment, or fill is not completed within six months after revocation of such permit, the City Council may cause such removal, abandonment, or fill to be so done, and the costs of such work shall become a lien against the property of the permitholder. (Ord. 16951 §108; March 11, 1996: prior Ord. 14198 § 6; September 3, 1985).

14.53.070 Rental Fee for Space.

The permittee shall pay to the City an annual rental for the use and occupancy of the space above or beneath said public street, alley, sidewalk, or other public ground or facilities occupied by such use, the following amounts to the extent permitted by law:

(a) For permittees whose lines and facilities, which are placed in the public street, alley, sidewalk, or other public ground, are used for their own internal purposes or whose lines and facilities provide services exclusively to persons, entities or businesses outside the City, a fee of fifty cents per lineal foot per year for space occupied above or underneath the public street, alley, sidewalk, or other public ground, facilities or poles, and such other compensation as may be mutually agreed upon.

(b) For permittees whose lines and facilities, which are placed in the public street, alley, sidewalk, or other public ground, are used to derive revenue from third party retail customers but serve five or less such customers, five percent of annual gross revenues and such other compensation as may be mutually agreed upon.

Persons who wish to serve more than five retail customers shall be required to secure a telephony franchise, a cable franchise, or a telecommunication franchise.

(c) All applicants shall, within thirty days after written demand therefor, reimburse the City for all direct and indirect costs and expenses, including those incurred by City personnel and attorneys as well as outside consultants, engineers, and attorneys, in connection with any issuance, review, enforcement, grant, modification, amendment, renewal or transfer of a telecommunications license, telecommunications franchise, or permit. (Ord. 17447 §6; December 7, 1998: prior Ord. 14198 § 7; September 3, 1985).

14.53.080 Rental Due Date; Collection.

All payments made under the provisions of this chapter shall be made to the City Treasurer and he/she is the collector thereof; and said rentals shall be due and payable on the first day of October of each year; provided, however, if the permit is issued for such space after the first day of October, the amount of the initial payment shall be prorated from the date when such permit is issued to the first day of October of the next year, and payments shall be due and payable on October 1 thereafter.

Any such rent shall become delinquent on the first day of December of each year and such delinquent rent shall bear interest at the rate of one percent per month until paid, and if such rent is not paid for six months or more after such delinquent date, a penalty of five percent shall be added thereto, in addition to said interest. (Ord. 14198 § 8; September 3, 1985).